

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X

UNITED STATES OF AMERICA :

- V - :

**AFFIRMATION**

**05 Cr. 1311 (PAC)**

**MARVIN MCFOY** :

Defendant. :

-----X

I, Robert M. Baum, hereby affirm under penalties of perjury,  
pursuant to 28 U.S.C. § 1746, as follows:

1. I am an Assistant Federal Defender with the Federal Defenders of New York and have been assigned to represent defendant Marvin McFoy in this case.
2. I make this declaration in support of Marvin McFoy's motion for relief in the NOTICE OF MOTION submitted herewith.
3. All statements herein are made upon information and belief unless otherwise indicated.
4. I have reviewed documents and records provided by the Government and conducted independent investigation into the facts and circumstances surrounding this case.
5. Marvin McFoy is charged in the instant indictment with one count of conspiracy to violate the narcotics laws of the United States. See Indictment, Exhibit A.
6. He was arrested on November 5, 2007.
7. He was indicted on or about December 15, 2005 but was not arrested on that indictment until almost two years

later. After filing, the indictment was sealed and remained sealed until the day of Mr. McFoy's arrest.

8. At the time of his arrest, Mr. McFoy was residing at 1368 Sheridan Avenue, apartment 5C, Bronx, New York. From approximately April, 2002 until his arrest on November 5, 2007, he resided continuously at the same address with his 8 year old daughter.
9. From 2002 until the time of his arrest, numerous government databases reflect his continuous residence. For example, the Social Security Administration communicated with him at that address (See Defense Exhibit B), and the Department of the Treasury, Internal Revenue Service, communicated with him at that address (See Defense Exhibit C). Mr. McFoy even received a notice for jury duty in Bronx County at the same address. (See Defense Exhibit D). Jury duty notices are taken from numerous public databases. In addition, in June, 2006, just 7 months after the indictment was filed, Mr. McFoy was represented by an attorney who filed documents on his behalf with the Department of Homeland Security, U.S. Citizenship and Immigration Services. (See Defense Exhibit E). Such documents would have disclosed his home address and the name, address and phone number of his attorney.

10. Due to the 23 month delay between Mr. McFoy's initial arrest and the filing of the indictment, his ability to present a defense has been prejudiced as a result of the loss of witnesses who could assist in his defense.
11. There is no indication from available Court records, that the Government took any steps to execute the warrant issued following the filing of an indictment in 2005, or to locate Mr. McFoy.

**WHEREFORE,** and on the grounds set forth in the attached Memorandum of Law, it is respectfully requested that this Court enter an Order (1) granting Mr. McFoy's's motion to dismiss the indictment in violation of his Sixth Amendment right to a speedy trial; or alternatively (2) grant the motion for discovery and disclosure of the identity of any confidential informant.

Dated: New York, New York  
February 19, 2008

---

**ROBERT M. BAUM, ESQ.**